

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5555 OF 2025

Chandrakant Purshottam Devi ... Petitioner
V/s.

Narayan Hari Devasathali and Ors. ... Respondents

Mr. Nikhil Wadikar (through VC) for petitioner i/by Nandu Pawar.
Mr. M.S. Athalye (through VC), for the respondents.

CORAM : N.J. JAMADAR, J.
DATE : 6th MAY 2025.

PC:

1. The challenge in this petition is to an order passed by the learned Civil Judge Senior Division Satara on an application to discard the evidence of Advocate Mukund Sarada, who was examined as the plaintiff/witness no. 1 on the ground that after the said witness was recalled for cross-examination pursuant to an order passed by the trial Court on 12th April 2018, the said witness deliberately did not make himself available for cross-examination and, eventually the said witness passed away on 5th July 2021.

2. By the impugned order, the learned Civil Judge rejected the application contending inter alia that the defendant had already extensively cross-examined the said witness and it cannot be said that the defendant had no opportunity to cross-examine the said witness.

3. Mr. Nikhil Wadikar, learned counsel for the petitioner

submitted that the material on record would indicate that the said witness deliberately did not appear before the Court to subject himself for further cross-examination. An order of recording his cross-examination on commission was also passed yet, the said witness did not co-operate and avoided the further cross-examination. Therefore, the evidence of the said witness deserves to be discarded.

4. I have perused the material on record. Evidently, the cross-examination of Mr. Sarada was completed by the defendants in the year 2017. The said witness was subsequently recalled for further cross-examination pursuant to order dated 12th April 2018. In this backdrop, it cannot be said that the applicant had no opportunity to cross-examine Mr. Sarada and the evidence which has been recorded does not constitute the evidence sans the cross-examination. Therefore, it cannot be said that the evidence of Mr. Sarada is not tested by cross-examination.

5. The circumstances on account of which Advocate Mr. Sarada did not appear for further cross-examination, would be a contentious issue. If the trial Court, upon perusal of the entire record finds that there was deliberate and conscious effort to avoid further cross-examination, the Trial Court may consider the said fact while appreciating the testimony of Advocate Mr. Sarada.

6. Keeping open the said issue, the petition stands disposed.

(N.J. JAMADAR, J)